IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Reference) No. 314 of 2001

The Commissioner of Gift Tax
Tamilnadu - II, Madras. ..Applicant

Vs.

Smt.Sarada Nedungadi ..Respondent

For Applicant :: Mrs. Pushya Sitaraman,
Senior Standing Counsel

For Respondent :: Mr.C.V.Rajan
for M/s.Subbaraya Aiyar

Reference under Section 26(3) of the Gift Tax Act, 1958 by the Income Tax Appellate Tribunal, `C' Bench, Madras in R.A.No.397 (Mds)/95 arising out of ITA/G.T.A.No.17(Mds)/90 for the assessment year 1985-86 on the file for decision on the question of law Annexure 'A' Assessment order dated 21.2.1998 on the file of the Gift tax Officer, Company Ward II (6) Madras 34 against the Annexure 'B' Commissioner of Income Tax (Appeals) order in ITA.No.1/88-89 ComII) dated 28.12.1989 on the file of the Commissioner of Income Tax (Appeals) VII madras 34 Annexure 'C' order of the Income Tax Appellate Tribunal in OITA No.17/MDS/90, dated 17.4.1995 on the file of the Income Tax Appellate Tribunal 'C' Madras.

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

In pursuance of the directions of this Court in T.C.P.No.148/96 dated 11.8.1997, at the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the following questions of law for our consideration:

> "1. Whether, on the facts and circumstances of the case, the Tribunal was right in law and had valid materials in holding that the settlement

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deed executed by the assessee was only a family arrangement and there is no liability to gift-tax ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in law and had valid materials in holding that the assessee constituted a tavazhi and the Madras Marumakkattayam Act, 1932 applies to the facts of the case ? "

2.1. The brief facts for deciding the above issues are as follows:-

For the relevant assessment year 1985-86, the assessee filed a return declaring taxable gift in respect of gifts made by her to her children and grandson. Subsequently, a revised return was filed by her declaring that there was no taxable gift, as what was effected through the settlement deed was only a family arrangement and hence, no gift-tax liability arose.

2.2. The father of the assessee, by name, Dr.K.N.Kesari, possessed land and buildings and by a deed of settlement dated 24.2.1944, settled the same to the assessee reserving the life interest in favour of his wife, Mrs.Madhavi Amma. After the death of the assessee's mother, Mrs.Madhavi Amma, the assessee sold some of the properties and later, by a deed of settlement dated 1.10.1984, retaining 3/8th share in the remaining properties, settled 5/8 share in the said properties to her sons, daughters and grandson to the extent of 1/8 each.

2.3. The assessee also filed a legal opinion given by Sri.K.Radhakrishnan, advocate, stating that the assessee's mother and the assessee were governed by the Madras Marumakkathayam Act, 1932 in respect of the immovable properties, that the assessee constituted a 'tavazhi' and that the 'tavazhi' could hold the property with all the incidents of the Marumakkathayam Act.

2.4. The assessing officer, however, by order dated 21.2.1989, rejected the claim of the assessee on three grounds, viz.,

a) there was no family arrangement as alleged, as the assessee has been described as the absolute owner of the property in the sale deed;
b) in the earlier document relating to the division of the property and the settlement of the property on the sons, daughter and grand son, there was no reference as to such family arrangement; and
c) the son of the assessee, K.Radhakrishnan, was not given any property, which could not be the case had

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the family arrangement been real.

Therefore, the assessing officer concluded that the specific arrangement had been made in order to claim exemption under Section 54F of the Gift Tax Act, by showing that the investment has been made in residential properties.

2.5. The assessing officer also held that the settlement by the father of the assessee having been absolutely and exclusively settled in favour of the assessee and none else, there can be no presumption to the contrary and that on a perusal of the documents and subsequent events, it was very clear that there was no dispute at all about the property and that the assessee was not dividing the 'tavazhi' property and what she was doing was to divide and gift the property to various children presumably with the object of avoiding tax burden.

2.6. As against the said order of the assessing officer, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 28.12.1989, reversed the order of the assessing officer by holding that absence of reference to disputes in the family or description of title in the deed are not fatal to the case and that when there is psychological resistance or reluctance to disclose or discuss the existence of disputes, the statement of the assessee that there are no disputes cannot be given undue importance and on the whole, as the property is a tarwad property, any gift of the same is invalid; and even assuming that it is not a 'tarwad' property, the nature of the property being doubtful, the settlement can only be viewed as an arrangement to resolve disputes and settle family disputes amicably. Accordingly, the Commissioner allowed the appeal of the assessee holding that there is no legal gift and what has been made in the settlement is only a family arrangement inviting no gift tax levy.

2.7. Exasperated with the said order of the Commissioner, the Revenue went on appeal before the Income-tax Appellate Tribunal. The Tribunal, by order dated 17.4.1995, confirmed the order of the Commissioner. The Tribunal held that if there is no contrary intention, that is to say, that if it is clearly not specified that it is not for the benefit of 'tavazhi', sec. 48 of the Madras Marumakkathayam Act applies and the statutory presumption, viz., that it is for the benefit of the family, comes into operation and hence, the property bequeathed by Dr.Kesari to his daughter, the assessee, absolutely constituted a 'tavazhi' and the Madras Marumakkathayam Act, 1932 is clearly applicable to the facts of the case. The Tribunal further held that even assuming but not admitting for a moment that there were no disputes regarding the property, the settlement deed executed by the assessee amounted to a bonafide family arrangement in view of the decision of the Supreme Court in the case of Maturi Pullaiah and another v. Maturi

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Narasimhan and others (AIR 1966 Supreme Court 1836), wherein it has been held that conflict of legal claims either in praesenti or in future is not a necessary and essential condition for validity of family arrangement. Ultimately, the Tribunal held that the assessee constituted a 'tavazhi' and the 'tavazhi' could hold the property with all incidents of Madras Marummakathayam Act, 1932 and that the settlement deed executed by the assessee cannot be treated as a gift as opined by the Gift Tax Officer.

2.8. Aggrieved over the said order of the Tribunal, the Revenue preferred a reference application before the Tribunal, consequent to which, the Tribunal, pursuant to the order of this Court, stated a case and raised the following substantial questions of law, with the risk of repetition:-

> "1. Whether, on the facts and circumstances of the case, the Tribunal was right in law and had valid materials in holding that the settlement deed executed by the assessee was only a family arrangement and there is no liability to gift-tax ?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in law and had valid materials in holding that the assessee constituted a tavazhi and the Madras Marumakkattayam Act, 1932 applies to the facts of the case ? "

2.9. For the purpose of better understanding, the above two questions were reframed and splitted into three issues as hereunder:-

(i) Whether the property is a 'tavazhi' property, in which case, Section 48 of the Madras Marummakkatayam Act would apply;

(ii) Whether the settlement deed dated 1.10.1984 executed by the assessee would constitute a family arrangement; and

(iii) If the Marmakkattayam law of inheritance would not apply to the case, whether the assessee is liable to pay gift-tax ?

2.10. As the above issues are inter-related, they are dealt with jointly in this judgment.

3. Both the learned counsel for the Revenue and the learned counsel for the respondent/assessee reiterated the submissions made

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by them before the authorities below. We have considered their submissions and perused the entire materials available on record, including the legal opinion of Sri.K.Radhakrishnan, advocate, dated 1.6.1984 as well as the settlement deed dated 24.2.1944 executed by Dr.K.N.Kesari, the father of the respondent/assessee.

4.1. In this connection, it is apt to refer the object and reasons for the enactment of Madras Marumakkattayam Act, 1932, as well as its relevant provisions.

4.2. The Tamil Nadu Marumakkattayam Act, 1932, has been enacted to define and amend in certain respects the law relating to marriage, guardian ship, intestate succession, family management and partition applicable to persons governed by the Marumakkattayam law of inheritance. The Act shall apply

> (a) to all Hindus in the State of Tamil Nadu who are governed by the Marumakkattayam law of inheritance;
>
> (b) to all Hindus outside the said State governed by the said law, in respect of properties within it; and
>
> (c) to all Hindu males, whether governed by the said law or not, who have contracted or may contract marital alliance with Hindu females governed by the said law.

4.3. Some of the relevant definitions in Section 2 of the said Act are referred to as hereunder:

> " (i) 'tarwad' means the group of persons forming a joint family with community of property governed by the Marumakkattayam law of inheritance;
>
> (j) (i) ''tavazhi'' used in relation to a female means the group of persons consisting of the female, her children and all her descendants in the female line; and
>
> (ii) ''tavazhi'' used in relation to a male means the 'tavazhi' of the mother of that male.

5.1. Admittedly, in the instant case, Dr.K.N.Kesari, the father of the assessee, was a brahmin and he married a lady governed by the Marmakkattayam law and hence, as per provisions of the Marmakkattayam Act, Dr.K.N.Kesari is governed by the said Act. Let us now consider whether Section 48 of the said Act would apply to the case.

5.2. It is apposite to refer Section 48 of the Act, which reads as hereunder:

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"48. Where a person bequeaths or makes a gift of any property to, or puchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as 'tavazhi' property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line;

Provided that, in the event of partition of the property taking place under chapter VI, the property shall be divided on the sirpital principle, the wife being entitled to a share equal to that of a son or a daughter."

6. The issue with regard to the nature of presumptions that should be invoked in construing gifts made or properties purchased in the name of a wife or a wife and her children by a person governed by Marumakkattayam law, has already been decided by a Full Bench of this Court in Chakkra Kannan v. Kunhi Pokkar (1938 Mad. 317), whereunder a gift was made by a father to his two sons and daughter and the question that arose for consideration was whether they took the property as joint tenants or only as members of the 'tarwad'. The Full Bench held that where properties were given by a person to his wife and children or to the children alone following the Marumakkattayam law, the presumption was that the donees took the property with the incidents of tarwad property. The principle of the decision is that the 'tavazhi's or the subordinate groups constituting the tarwad, are capable of holding properties and that, if a gift is made to the members of a 'tavazhi', the presumption is that they had the properties with the incidents of tarwad property.

7. In Bhaskaran Thirumulpad v. Kavunni Thirumulpad (1967 (16) L.W. 455), a Division Bench of this Court has laid down three principles, viz.,

(i) that a person governed by Marumakkattayam law can make a gift to an entity called a 'tavazhi', in which case the members of the said 'tavazhi' take the property with all the incidents of tarwad property;

(ii) when a gift is made to a wife and her children or to all the children or the entire group constituting the 'tavazhi', a presumption is drawn that the gift is for the 'tavazhi'; and

(iii) if the gift is to a wife or only to some of her children, there is no scope for invoking any presumption; but the question falls to be considered in each case on the facts whether the gift was

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intended for the 'tavazhi' or for the donees absolutely or for the donees as joint tenants.

(emphasis supplied)

8. In the instant case, the assessee's father by way of a settlement deed dated 24.2.1944, settled his properties on the assessee reserving the life interest in favour of his wife Mrs.Madhavi Amma. The relevant portions of the said settlement deed reads as follows:-

" ...

That the said K.Madhavi Amma, the first beneficiary herein shall have a life estate in the property hereby settled and more particularly referred to in the schedule attached hereto and she shall, during her life time, have sole control and possession of the property hereby settled and shall be exclusively entitled to all the rents and profits accruing therefrom. She shall have no power of sale or mortgage, or otherwise to alienate or encumber the property beyond her life.

Upon the death of the first beneficiary the said K.Madhavi Amma, the second beneficiary K.Sarada Devi, aforesaid, shall be absolutely entitled to the property hereby settled and more particularly referred to in the schedule attached hereto and shall have, enjoy and exercise all rights and privileges incidental to a full and absolute owner including the power of sale, mortgage and gift.

..."

(emphasis supplied)

9. In the case before the Division Bench of this Court, viz., Bhaskaran Thirumulpad v. Kavunni Thirumulpad (1967 (16) L.W. 455), referred supra, there was a Will executed by the father in respect of moveable and immoveable properties belonging to him in favour of his children and when the said Will was executed, it was conceded that the first plaintiff therein was born. It was a case where the father bequeathed his properties only to some of the members of the 'tavazhi'. In the said case, the testator for one reason or other not only excluded the name of the first plaintiff therein, but also made a specific statement that except for them no other persons can lay any manner of claim to this property. It was observed by the Division Bench, therefore, that if the father intended that the property should be taken by the 'tavazhi', he would not have made such a specific statement in the Will and therefore, it was not permissible to raise the presumption that the bequest was to the 'tavazhi' with the incidents of tarwad property.

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10. The facts of the aforesaid case are identical to that of the present case. In the instant case, as seen from the records that while the father was executing the settlement deed dated 24.2.1944 absolutely and exclusively in favour of the respondent/assessee, reserving only the life interest on his wife, the mother of the assessee, the assessee had already given birth to two sons and had the father of the assessee really wanted that the properties should benefit the assessee's children also, he would have been explicitly mentioned the same in his settlement deed and in the absence of any such expression in the settlement deed and when it was specifically mentioned that after the death of the mother of the assessee, the assessee became the absolute owner of the property and that she shall have the power of sale, mortgage and gift, even assuming that the assessee constituted a 'tavazhi' and consequently, the members of the 'tavazhi' could hold the property with all the incidents of the tarwad property, in view of the specific statement in the settlement deed, the third principle as laid down in Bhaskaran Thirumulpad v. Kavunni Thirumulpad' case, would squarely apply to the case. That apart, since the gift by the father was not intended for the 'tavazhi', the same qualifies the exclusionary clause as contemplated under Section 48 of the Act, viz., '..unless a contrary intention appears from the Will or deed of gift or purchase or from the conduct of the parties...'.

11. We are, therefore, of the confirmed opinion that in view of the exclusionary power given to the assessee by her father by way of a settlement deed, the presumption that the property bequeathed by the father of the assessee is a 'tavazhi' property and hence, the members of the 'tavazhi' can hold the property with all the incidents of tarwad, cannot be drawn and as a result, the Marmakkattayam law of inheritance would not get attracted.

12. Once we come to the conclusion that the property gifted to the assessee by her father by way of a settlement deed would not govern the Marmakkattayam law of inheritance, then we do not hesitate to hold that the properties gifted by the assessee to her sons, daughter and grandson would attract the provisions of the Gift Tax Act and only in order to avoid the gift-tax liability, the assessee claimed that it was only a family arrangement in order to settle the disputes between the family members regarding the property, which, in our view, could only be an after-thought. In fact, it is seen from the records that the assessee originally filed a return showing taxable gift at Rs.8,45,000/- and later, after getting a legal opinion from her advocate, filed the revised return stating that what was gifted to her sons, daughter and grandson was only a family arrangement to settle the discomforts between the members of the family.

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In view of our above conclusion, we hold that the property gifted by the assessee are liable to be assessed as income and hence, to be taxed under the Gift Tax Act. Accordingly, the reference is answered in the negative, in favour of the Revenue and against the assessee.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "C".
Rajaji bhavan, III Floor,
Besant Nagar, Chennai 90 (5 copies)

2.The Secretary,
Central Board of Direct Taxes,
New Delhi. (3 Copies)

3.The Commissioner of Income Tax
(Appeals), VII Madras.

4.The Gift-tax Officer,
Company Ward -II(5), Madras.

5.The Commissioner of Gift Tax Tamil Nadu II,
Madras.

+ 1 cc to Mr. C. V. Rajan, Advocate, SR No.4588

+ 1 cc to Mr. Pushya Sitaraman, Advocate, SR No.4566

Tax Case (R) No.314 of 2001

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